

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:	)	
	)	
HARTMANN HAY CO., LLC,	)	CASE NO. BK17-40593
	)	A17-4033
Debtor(s).	)	
HARTMANN HAY COMPANY, LLC,	)	8:16CV123
	)	(consolidated with Case No. 8:16CV125)
Plaintiff,	)	
	)	
vs.	)	CHAPTER 12
	)	
WILBUR-ELLIS COMPANY, LLC, f/k/a	)	
WILBUR-ELLIS COMPANY,	)	
	)	
Defendant.	)	

REPORT & RECOMMENDATION

This matter is before the court upon referral by the United States District Court for the District of Nebraska (Fil. No. 1).

Hartmann Hay Company, LLC, filed a complaint in the District Court of Hall County, Nebraska on February 29, 2016, alleging damages of \$163,200 as a result of the defendant's misapplication of herbicides to the plaintiff's milo crop in 2014. The defendant removed the case to the United States District Court for the District of Nebraska on March 23, 2016, under 28 U.S.C. §§ 1332 and 1441, based on diversity of citizenship and the amount in controversy. The case is scheduled for trial on July 25, 2017. Hartmann Hay Company filed a Chapter 12 bankruptcy petition in this court on April 20, 2017, and counsel for the defendant filed a suggestion of bankruptcy in the district court lawsuit.

In response to the suggestion in bankruptcy, the district court referred the case to the bankruptcy court. However, Local Rule NEGenR 1.5(a)(1) was amended in December 2014 to allow the district court to stay the litigation as to the party in bankruptcy until a party requests referral of the case to the bankruptcy court. Here, no party has requested such a referral.

In addition, the debtor in bankruptcy is the plaintiff in this proceeding seeking damages against the defendant. As such, this proceeding is not an action against the debtor and is not subject to the automatic stay of 11 U.S.C. § 362(a). The cause of action is, however, property of the bankruptcy estate. Therefore, the debtor must seek permission of the bankruptcy court to employ counsel to pursue the cause of action in accordance with local court rules and the Federal Rules of Bankruptcy Procedure.

Accordingly, I respectfully recommend to the United States District Court for the District of Nebraska that it withdraw the reference of this case and stay all proceedings until such time as the plaintiff or other appropriate party in interest obtains an order of the bankruptcy court authorizing the employment of the plaintiff's attorney to proceed with the litigation in district court.

The Clerk of the Bankruptcy Court shall process this recommendation pursuant to the local court rules.

DATED: June 7, 2017.

RESPECTFULLY SUBMITTED,

/s/ Thomas L. Saladino  
Chief Judge

Notice given by the Court to:  
Siegfried H. Brauer III  
John C. Hahn  
James J. Niemeier  
James A. Overcash  
J. Scott Paul  
U.S. Trustee